UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,960	07/03/2003	Gordon P. Kurtenbach	1500.1005CDC	3561

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)	
Office Action Summary	10/611,960	KURTENBACH, GORDON P.	
	Examiner	Art Unit	
	MYLINH TRAN	2179	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 August 2009</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-3,7 and 12-26</u> is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-3,7 and 12-26</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some *　c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>08/28/2009</u>.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Applicant's amendment filed 08/28/2009 has been entered and carefully

considered. Claims 1, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23 and 26 have

been amended. However, the limitations of the amended claims have not been

found to be patentable over prior art of record; therefore, claims 1-3, 7 and 12-

26 are rejected under the same ground of rejection as set forth in the Office

Action mailed 05/28/2009.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the

United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by

another filed in the United States before the invention by the applicant for patent, except that an international application

filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application

filed in the United States only if the international application designated the United States and was published under

Article 21 (2) of such treaty in the English language.

Claims 1-3, 7 and 12-26 are rejected under 35 U.S.C. 102(e) as being

anticipated by Smith [US. 5,721,853].

        As to claims 1, 7, 12, 15-16, 23 and 26, Smith teaches a computer

implemented method and corresponding apparatus for a menu selection

comprising the steps/means for a display displaying menu comprising a radial

marking menu portion simultaneously displayed with a linear menu portion

(figure 3D, the radial marking menu portion on three quadrants: Tools, Ask AST

and S/W Suites. These menu portions also are linear menu portions); a pointing

device for indicating a type of selection by one of making a stroke having a

direction and designating a location (figure 2, column 4, line 45 through column

5, line 3); and a computer connected to a display and said pointing device

(figure 2, (23)), and determining selection criteria for the type and a menu

selection based on a method of selection from one of the stroke and the

location (figure 3E, column 5, line 40 through column 6, line 6). Smith also

teaches a display displaying a menu comprising a radial marking menu portion

and a linear menu portion at figure 3D; where selectable items in the radial

marking menu sub-menu are included based on a priority (column 6, lines 7-

50).

Smith also teaches two different portions of radial marking menu (figure 3D)

and linear menu (figure 3C); a selection from the menu is made without

displaying the menu with a single, uninterrupted stroke (at the time a mouse

pointer is moved to select the four menu portions (represented the four radial

quadrants representing menu items), the menu is not displayed yet. The menu

which is not displayed at the time the mouse pointer moves to select it. The

menu items are displayed after waiting a user specified length of time (see

abstract and column 2, line 60 through column 3, line 10).

    As to claim 2, Smith teaches the menu including at least nine selectable

menu items (figure 3E).

As to claim 3, Smith teaches the menu including at least one menu item

selectable based on the designating of only a location (figure 2, column 4, line 45 through column 5, line 3).

As to claims 13-14, 17, Smith teaches specifying selection criteria of a radial marking menu item when a method of selection is a stroke direction in the radial marking menu portion (column 5, lines 40 through column 6, line 6) and specifying selection criteria of a linear location menu item when a method of selection uses an end point of the stroke when the stroke is in a linear location selection region (column 5, lines 4-40).

Smith teaches the radial marking menu portion at figure 3D and the linear menu portion at figure 3C; a selection from the menu is made without displaying the menu with a single, uninterrupted stroke (at the time a mouse pointer is moved to select the four menu portions (represented the four radial quadrants representing menu items), the menu is not displayed yet. The menu which is not displayed at the time the mouse pointer moves to select it. The menu items are displayed after waiting a user specified length of time (see abstract and column 2, line 60 through column 3, line 10).

As to claims 18-19, Smith shows making a stroke in a menu comprising a radial marking menu portion simultaneously displayed with a linear menu portion (figure 3D, the radial marking menu portion on three quadrants: Tools, Ask AST and S/W Suites. These menu portions also are linear menu portions), selecting a displayed first item of the menu when the stroke terminates inside the displayed item in a displayed first linear portion of the menu (figure 3C, the first item of the menu (figure 3c, 304a) is selected when the mouse pointer

terminates inside the portion 304b); and selecting, based on the stroke, a

second item of the menu, when the stroke is in a second radial portion of the

menu and when the stroke does not terminate inside any displayed items of the

menu (figure 3D, the mouse pointer moves to the second radial portion 306b);

the radial marking menu portion represents a grouping of menu items based

upon frequency of selection (figure 3E, the radial marking menu portion

represents a grouping of menu items (302, 304, 306 and 308) base upon

frequency of selections of the four radial quarants).

     As to claims 20-22, Smith teaches a radial portion, a linear portion and

a menu selection being based on a stroke, selection of a radial menu item of

radial portion being suppressed when a pointer location is in the linear portion

(column 5, lines 4-40), the radial menu item selection being reactivated when

the pointer location exits a linear item in the linear portion and when the pointer

location crosses a radial portion boundary line extending across the menu

(column 5, line 40 through column 6, line 6); a selection from the menu is made

without displaying the menu with a single, uninterrupted stroke (at the time a

mouse pointer is moved to select the four menu portions (represented the four

radial quadrants representing menu items), the menu is not displayed yet. The

menu which is not displayed at the time the mouse pointer moves to select it.

The menu items are displayed after waiting a user specified length of time (see

abstract and column 2, line 60 through column 3, line 10).

     AS to claim 24, Smith teaches the pointing device allowing a user to

select by both making a stroke and designating a location and for indicating a

type of selection by the user making one of a stroke having a direction for radial

marking menu selection and designating a location (selection of each of the

quadrants 202-208 (figure 3A-E) is by movement of the mouse pointer (23) into

any of the four quadrants causes the corresponding secondary interface to be

displayed. Moving the mouse pointer (23) over the quadrant 204 (figure 2)

labeled "Ask AST" a cause a secondary interface comprising plurality of menus.

These menus are displayed and selected by movement of the mouse pointer

into any of the four quadrants (a stroke). The step of moving the mouse pointer

over these quadrants is similar to the step of making a stroke having a direction

and designating a location).

As to claim 25, Smith teaches the pointing device for indicating a type of

selection by one of making a stroke having a direction and designating a

location local to both the display and the pointing device (selection of each of

the quadrants 202-208 (figure 3A-E) being by movement of the mouse pointer

(23) into any of the four quadrants causes the corresponding secondary

interface to be displayed is considered as a radial marking selection type.

Selection of any menu from a linear menu portion 306d, figure 3D is considered

as a linear selection type. Therefore, it is clear that Smith teaches determining

selection criteria for the type and a menu item selection based on a method of

selection from the one of the stroke and the location).

Response to Arguments

Applicant has argued about the Declarations and Attachments filed 06/11/07.

The arguments have been considered but they are still not persuasive.

Therefore, the rejection has been maintained.

1) Both Declarations and Attachments, numbered paragraph 2 from the June,

2007 Declaration has been considered but they are ineffective to overcome the

applied references.

The applicant fails to map the supported document of Exhibit B to each and

every limitation in the invention claims.

The declaration and accompanying Attachment B do not provide enough

evidences to support all the claimed limitations prior to the reference date,

therefore do not support conception of the claimed invention. Although the

Exhibit B shows the limitation of "a display displaying a menu comprising a

radial marking menu portion simultaneously displayed with a linear menu

portion", it is insufficient to support the feature of "the radial marking menu

portion represents a grouping of menu items based upon frequency of

selection" in the Exhibit B (the examiner could not be able to locate the support

for the feature as stated by the applicant). The Exhibit fails to show the features

"selecting a displayed first item of the menu when the stroke terminates inside

the displayed item in a displayed first linear portion of the menu, and selecting,

based on the stroke, a second item of the menu, when the stroke is in a second

radial portion of the menu and when the stroke does not terminate inside any

displayed items of the menu" and "a linear portion associated with and

simultaneously displayed with the radial portion, where selection of a radial

menu item of the radial portion is suppressed when a pointer location is in the

linear portion".

2) Applicant has argued that Smith fails to teach "a selection from the

menu is made without displaying the menu with a single, uninterrupted stroke".

However, the examiner respectfully disagrees because at the time a mouse

pointer is moved to select the four menu portions (represented the four radial

quadrants representing menu items), the menu is not displayed yet. The menu

which is not displayed at the time the mouse pointer moves to select it. The

menu items are displayed after waiting a user specified length of time. The

applicant's attention is directed to the abstract and column 2, line 60 through

column 3, line 10, cited "When a mouse pointer is moved into the spot GDE, a

ring or collar having four radial quadrants representing menu items is displayed

after waiting a user specified length of time. These radial menu items are

displayed around the GDE. When the mouse pointer is subsequently moved

into any of the four quadrants of the collar, a secondary rectangular interface

hierarchically associated with the quadrant is displayed after waiting a user

specified length of time."

The Applicant also argued that in claims 18-19, the feature "the radial

marking menu portion represents a grouping of menu items based upon

frequency of selection" which was not addressed by the Office Action. However,

the feature is disclosed in figure 3E, the radial marking menu portion represents

a grouping of menu items (302, 304, 306 and 308) base upon frequency of

selections of the four radial quadrants. It is a typo error when the examiner did

the operations of cutting and pasting the feature "a selection from the menu is made without displaying the menu with a single, uninterrupted stroke" instead of the feature of "the radial marking menu portion represents a grouping of menu items based upon frequency of selection". However, the feature of "the radial marking menu portion represents a grouping of menu items based upon frequency of selection" is still disclosed in Smith, figure 3E.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mylinh Tran. The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4141.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo, can be reached at 571-272-4847.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mylinh Tran

Art Unit 2179

/Weilun Lo/

Supervisory Patent Examiner, Art Unit 2179